

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Constantinos Stivaros	Team: Team # 2	CCRB Case #: 201106121	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/07/2011 3:50 AM	Location of Incident: Parking lot behind 75 Essex Street	Precinct: 07	18 Mo. SOL 11/7/2012	EO SOL 11/7/2012	
Date/Time CV Reported Sat, 05/07/2011 5:26 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/12/2011 3:45 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Mark Vazquez	02696	933447	007 PCT
2. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jared Badillo	01281	941382	007 PCT
2. POF Julie Towle	31713	937221	007 PCT
3. POM Christophe White	08891	942696	007 PCT
4. POM Gerald Mcdougall	00124	937060	007 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Discourtesy: An officer spoke obscenely and/or rudely to § 87(2)(b) and § 87(2)(b)	
B. An officer	Force: An officer pointed his gun at An individual.	
C.SGT Mark Vazquez	Force: Sgt. Mark Vazquez used physical force against § 87(2)(b)	

phone
Case Summary

On May 7, 2011, § 87(2)(b) called the IAB command center and filled a complaint under IAB log #11-20586. On May 12, 2011, the case was forwarded to the CCRB under IAB log #11-21076. On May 7, 2011 at approximately 3:50 a.m., § 87(2)(b) and his friends identified as § 87(2)(b) and § 87(2)(b) were in a parking lot behind 75 Essex Street in Manhattan drinking alcohol. They were approached by PO Jared Badillo and Sgt. Mark Vazquez and issued summonses for having open containers. The following allegations resulted:

- **Allegation A – Discourtesy: An officer spoke obscenely and/or rudely to** § 87(2)(b) and § 87(2)(b) § 87(2)(g)
- **Allegation B – Force: An officer pointed his gun at An individual.** § 87(2)(g)
- **Allegation C – Force: Sgt. Mark Vazquez used physical force against** § 87(2)(b) § 87(2)(g)

Results of Investigation

Civilian Statement(s)

Complainant: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) Hispanic male, 5'4" tall, 170 lbs., with brown hair and brown eyes.

CCRB Testimony

On May 17, 2011, § 87(2)(b) provided a phone statement (encl. B4). On June 20, 2011, § 87(2)(b) was interviewed at the CCRB (encl. B5-8). § 87(2)(g)

On May 7, 2011, § 87(2)(b) and his friends § 87(2)(b) § 87(2)(b) and one unknown individual were in a parking lot between Essex and Broome Street in Manhattan. The investigation was able to identify the friends as § 87(2)(b) and § 87(2)(b) § 87(2)(g). Since it was approximately 2:00 a.m., the parking lot was mostly empty. The four individuals were sitting in the center of the parking lot with a large bottle of Bacardi. The four of them had drunk approximately half of the bottle over two hours. § 87(2)(b) stated that he was a little bit intoxicated at the time. In his phone statement he stated that he and his friends were just cutting through the parking lot on their way to somewhere else but did admit to one of them having an open container.

As the four individuals were in the parking lot drinking, two male Hispanic officers, approximately 5'8" tall approached them from Broome Street. § 87(2)(b) could not tell the

difference between PO1 and PO2 because they looked similar. He knew one of them was named Badillo from the summons he was issued. The investigation was able to determine that the two male Hispanic officers were Sgt. Mark Vazquez and PO Jared Badillo. One officer had his gun drawn. An officer told § 87(2)(b) and his friends to “get the fuck on the floor” but § 87(2)(b) did not know which of the officers said this. The individuals asked the officers what the problem was and what was going on. The officer with the gun drawn then pointed his gun at the unknown individual and the other officer took out his asp. The four individuals got down on the ground. In his phone statement, § 87(2)(b) stated that three or four uniformed unidentified officers came on scene at this point and attacked all four individuals and a Hispanic officer punched him in the face.

Both officers asked the individuals for their names, dates of birth, and IDs. Each officer spoke to different individuals. After a minute of questioning, § 87(2)(b) got up off the ground and told the officer that there was glass on the floor. The officer told § 87(2)(b) to get back on the floor. § 87(2)(b) told the officer that he refused to get back on the floor because of the glass. § 87(2)(b) then turned his back towards that officer. When his back was turned, § 87(2)(b) ended up on the floor facedown but is unsure how he got on the ground. He believed one of the Hispanic officers threw him down on the floor but did not know why. One of the Hispanic officers then turned § 87(2)(b) around and punched him in the face four times around both eyes. § 87(2)(b) sustained bruises and swelling to his eyes. He was also told by his friends that officers hit him with the asp but § 87(2)(b) did not see it but did have bruises on his sides near his ribs. He was also told that § 87(2)(b) was kicked by an officer at one point but he did not witness it.

As § 87(2)(b) was being punched, two more officers arrived. PO3, identified via investigation as PO Julie Towle, and PO4, identified via investigation as PO Gerrald McDougall. When these other two officers arrived, the Hispanic officer stopped punching § 87(2)(b) picked him up off the ground, handcuffed him, and placed him in a marked NYPD van. He waited in the van for 15-20 minutes while the officers questioned his three friends. His three friends were then issued summonses for § 87(2)(b) and were released. The officers returned to the van and asked § 87(2)(b) if he wanted a summons. § 87(2)(b) said he did. He saw a Hispanic officer write out the summons and he was released after the issuance of the summons. § 87(2)(b) then went to the 7th Precinct Stationhouse and filed the complaint. § 87(2)(b) did not seek medical treatment for his injuries.

Photo Viewing

A viewing of photos of Sgt. Vazquez and PO Badillo was arranged for § 87(2)(b) so he could distinguish which officer used profanity. Photo viewings were scheduled for September 14, 2011 and September 16, 2011 but § 87(2)(b) failed to appear for both viewings and as of September 21, 2011, he made no attempts to contact the CCRB.

Attempts to Contact Civilians

§ 87(2)(b)
First contact was established with § 87(2)(b) on July 27, 2011 and he provided a phone statement (encl. B11) § 87(2)(b) stated that he and three other individuals who he could not name were walking across a parking lot on Broome Street. Some of the individuals had open containers. As they were walking, a large group of uniformed officers ran towards them. Two of the officers had their guns drawn. They were told to get on the ground and they complied. They were all searched and three of them, including § 87(2)(b) were issued summonses and released. The last individual, identified via investigation as § 87(2)(b) was arrested according to § 87(2)(b)

§ 87(2)(b) On July 28, 2011, § 87(2)(b) appeared at the CCRB to be interviewed but he refused to go on record or provide a statement. He agreed to sign a withdrawal form (encl. G1) and stated off record that he was not coerced by the NYPD or CCRB into withdrawing and was withdrawing of his own free will.

§ 87(2)(b)

First contact was established with § 87(2)(b) on July 28, 2011 when he called from Riker's Island and provided a brief phone statement (encl. B10) He stated that while he was in a parking lot with his friends drinking vodka, 20-30 uniformed and plainclothes officers arrived on scene in both marked and unmarked vehicles and told all of them to get on the ground and then beat them with nightsticks. § 87(2)(b) stated he would be released from Riker's Island on August 4, 2011. § 87(2)(b) was called on August 8, 2011 and stated he was employed as a truck driver and was frequently out of state. He agreed to send a notarized statement to the CCRB but did not do so. Between August 18, 2011 and September 2, 2011, three additional calls were placed to § 87(2)(b) and voicemails were left. Please call letters were also mailed to § 87(2)(b) on July 19, 2011, July 26, 2011, and August 24, 2011 and none have been returned by the USPS. As of September 21, 2011, § 87(2)(b) has not contacted the CCRB.

§ 87(2)(b)

First contact was established with § 87(2)(b) on July 22, 2011 when he was called and provided a phone statement (encl. B9). He stated that while walking through a parking lot with his friends, six officers exited a van and approached them. The officers asked for IDs and for everyone to get on the ground. Once everyone was on the ground, two of the officers drew their guns and pointed them at § 87(2)(b) and his friend § 87(2)(b) identified via investigation as § 87(2)(b). The officers then began hitting his friend § 87(2)(b) identified via investigation as § 87(2)(b) with nightsticks. The officers then took § 87(2)(b) and drove away. § 87(2)(b) could not schedule an interview on that day and stated he would call back to schedule. Since he did not call back, he was called on July 25, 2011 and again stated he could not schedule an interview and would call back. Between July 27, 2011 and September 2, 2011, § 87(2)(b) was called six times and voicemails were left on every call. Please call letters were also sent to § 87(2)(b) on July 19, 2011, July 26, 2011, and August 24, 2011 and none have been returned by the USPS. As of September 21, 2011, § 87(2)(b) has not contacted the CCRB.

NYPD Statement(s):

Subject Officer: Sgt. MARK VAZQUEZ

- *Sgt. Vazquez is a § 87(2)(b)-old Hispanic male, 5'11" tall, 175 lbs., with brown hair and brown eyes.*
- *Sgt. Vazquez was the supervisor of the Cabaret Unit with PO Jared Badillo from 9:30 p.m. on May 6, 2011 to 6:27 a.m. on May 7, 2011 in uniform in marked van #8665.*

Memo Book

At 3:50 a.m., four males were stopped in front of 81 Ludlow Street and four summonses were issued by PO Badillo (encl. C1-3).

CCRB Testimony

On August 18, 2011, Sgt. Mark Vazquez appeared at the CCRB to be interviewed (encl. C4-6). Sgt. Vazquez and PO Badillo were on routine patrol at approximately 3:50 a.m. in a marked van checking the area to make sure that the clubs in the neighborhood had turned down their music. While on Ludlow Street, they heard loud noise coming from a parking lot. They heard individuals

yelling and cursing. They turned into the lot and saw four males holding bottles and plastic cups. They also saw bottles and cups on the ground around the individuals. Sgt. Vazquez believed they were drinking alcohol. When they were driving in, one male identified as § 87(2)(b) clutched his jacket, put his hands inside his jacket, and turned around to hide the front of his jacket from the officers. He then began to walk away.

Sgt. Vazquez believed that § 87(2)(b) attempted to conceal something in his jacket because of the movements he made. Sgt. Vazquez believed it may have been a weapon, specifically a gun, due to the movements. Sgt. Vazquez and PO Badillo then exited their vehicle. PO Badillo went towards the three individuals in the parking lot. Sgt. Vazquez drew his gun and kept it in a “ready position” which, was pointed down. § 87(2)(b) was walking quickly away from the officers and was hunched over. Sgt. Vazquez followed him and when he caught up with § 87(2)(b) put his hand on § 87(2)(b)'s shoulder. § 87(2)(b) turned around and Sgt. Vazquez asked him to show him his hands. § 87(2)(b) did not show him his hands. Sgt. Vazquez then opened up § 87(2)(b)'s jacket and saw a bottle of alcohol, possibly Hennessy, but he could not recall exactly. Sgt. Vazquez then holstered his gun, took the bottle, and brought § 87(2)(b) back to the other group of individuals. Sgt. Vazquez never pointed his gun at anyone.

The three individuals with PO Badillo were loud and belligerent. They yelled and screamed but Sgt. Vazquez could not recall what they were saying. He also described them as intoxicated. They also held bottles and plastic cups. When § 87(2)(b) was brought back to the group, Sgt. Vazquez asked them to get on the ground. Sgt. Vazquez did not recall if he said, “Get the fuck on the floor” or used any profanity. He did state that it would not be unusual to use profanity if individuals are being non-compliant. Sgt. Vazquez then called for backup.

While Sgt. Vazquez waited for backup, § 87(2)(b) attempted to get up. Sgt. Vazquez did not let him get up by putting his hand on § 87(2)(b)'s back to keep him down. He never drew his asp or hit § 87(2)(b) or anyone else with the asp. He also never punched or kicked § 87(2)(b) or anyone else. He also did not see anybody else use physical force with the civilians. He did not know if anybody else drew their asp or used it.

Two to three police vehicles and three officers on horseback then arrived as backup. He recognized PO Towle and possibly PO McDougall on scene. When the backup arrived, the individuals were handcuffed and Sgt. Vazquez asked them for their IDs. They were also stood up. The individuals told the officers where their IDs were and the officers recovered them. Their IDs were run in the computer and the individuals were then issued summonses by PO Badillo and released. § 87(2)(b) was still being loud and upset so Sgt. Vazquez put him in the van and told him to calm down. He informed § 87(2)(b) that he was just going to give him a summons and he was not going to go to jail. § 87(2)(b) calmed down and he was issued a summons and released. Sgt. Vazquez added that no one complained of injuries during the incident and no one was transported to the hospital. Additionally, Sgt. Vazquez did not see any visible injuries on anybody.

Subject Officer: PO JARED BADILLO

- PO Badillo is a § 87(2)(b)-old Hispanic male, 6' tall, 200 lbs., with black hair and brown eyes.
- PO Badillo was on patrol for the Cabaret Unit with Sgt. Mark Vazquez from 9:45 p.m. on May 6, 2011 to 4:20 a.m. on May 7, 2011 in uniform in a black unmarked car #§ 87(2)(b).

Memo Book

At 3:50 a.m., four males were stopped in front of 81 Ludlow Street for an open container that was a bottle of Bacardi. Summonses were issued to § 87(2)(b) and § 87(2)(b). His memo book also states he was in vehicle #§ 87(2)(b) (encl. C7-9).

Summons

Summons #§ 87(2)(b) was issued to § 87(2)(b) on May 7, 2011 at 3:50 a.m. in front of 81 Ludlow Street for § 87(2)(b) by PO Badillo (encl. C10).

CCRB Testimony

On August 11, 2011, PO Jared Badillo appeared at the CCRB to be interviewed (encl. C11-13).

§ 87(2)(g)

While on Ludlow Street, PO Badillo noticed four individuals approximately 100 yards away in a parking lot with a bottle of Bacardi. They passed the bottle around and drank from it in public view. PO Badillo decided to approach them. PO Badillo and Sgt. Vazquez approached the individuals and told them to stop. One individual described as a heavyset black male, approximately 6'2" clutched his hands on his chest and seemed to be hiding something. The investigation was able to identify this individual as either § 87(2)(b) or § 87(2)(b). Another skinny black male, approximately 6' tall began walking away towards Essex Street. The investigation was able to identify this individual as either § 87(2)(b) or § 87(2)(b). Sgt. Vazquez went to the individual clutching his hands, turned him around, and put him with the other individuals. PO Badillo pursued the individual walking away, grabbed him by his left arm, and brought him back to the scene.

All four individuals were now together. PO Badillo took out his asp but did not recall if he extended it and told all the individuals to get on the ground. No one ever said, "get the fuck on the floor" or used any profanity. No guns were drawn or pointed at any point.

An individual named § 87(2)(b) who was being watched by Sgt. Vazquez then got up and tried to walk away. Sgt. Vazquez grabbed § 87(2)(b) by the shirt and brought him down to the ground so he would not get away. § 87(2)(b) resisted by squirming and moving his body. Sgt. Vazquez kept control of § 87(2)(b) by holding him down. An asp or a baton was not used on § 87(2)(b). He was never punched and no other force was used against him. No one else was ever punched or had physical force used against them.

Backup officers arrived on the scene that included two officers from the mounted unit that arrived on their horses. They arrived approximately one minute after being called. The backup officers did not interact with any of the individuals. The individuals were then released one at a time as they were issued their summonses for § 87(2)(b). PO Badillo does not recall if § 87(2)(b) was ever put in a police vehicle or if he was put in handcuffs.

Witness Officer: PO JULIE TOWLE

- PO Towle is a § 87(2)(b)-old white female, 5'8" tall, 150 lbs., with red hair and blue eyes.
- PO Towle was on patrol for the Cabaret Unit from 8:30 p.m. on May 6, 2011 to 4:35 a.m. on May 7, 2011 with PO Christopher White and then PO Gerrald McDougall in uniform in unmarked vehicle #§ 87(2)(b).

Memo Book

PO Towle did not have any memo book entries in regards to this incident (encl. C14-16).

CCRB Testimony

On August 19, 2011, PO Julie Towle appeared at the CCRB to be interviewed (encl. C17-18). PO Towle was working conditions in unmarked vehicle #§ 87(2)(b) with PO White on May 7, 2011. At approximately 3:15 a.m., PO White made an arrest and stayed at the stationhouse. She went back out on patrol with PO Mcdougall. While on patrol, she received a request for more officers from the conditions sergeant. She did not receive any additional information in regards to why more officers were requested.

When PO Towle and PO Mcdougall arrived at the scene, she saw § 87(2)(b) in handcuffs sitting in the police van. There were also three or four other civilians standing in the parking lot. They were not handcuffed and there were no visible injuries on any of the civilians. She never saw any officer, including PO Badillo and Sgt. Vazquez ever draw an asp, hit any civilian with an asp, punch anyone, kick anyone, or use any physical force against anybody. She also never heard any officer say, "Get the fuck on the floor" or use any profanity towards the civilians. She also did not see any officer draw their gun.

PO Towle remained on scene for approximately 20 minutes and made sure the scene was safe. When she left, PO Badillo was writing summonses for § 87(2)(b). PO Towle saw a bottle of alcohol and cups on the floor near the civilians. She then left the scene with PO Mcdougall before all the individuals were released.

Witness Officer: PO GERRALD MCDOUGALL

- PO Mcdougall is a § 87(2)(b)-old white male, 6'3" tall, 230 lbs., with brown hair and blue eyes.
- PO Mcdougall was on patrol for the Cabaret Unit from 9:20 p.m. on May 6, 2011 to 6:05 a.m. on May 7, 2011 alone and with PO Towle in uniform at a foot post on Ludlow Street and Delancy Street and unmarked vehicle #§ 87(2)(b).

Memo Book

At 3:55 a.m., PO Mcdougall arrived at 75 Essex Street. At 4:30 a.m. he resumed patrol (encl. C19-20).

CCRB Testimony

On August 19, 2011, PO Gerald Mcdougall appeared at the CCRB to be interviewed (encl. C21-22). § 87(2)(g)

When he arrived on scene, he saw one civilian sitting in a police van and three or four other civilians sitting on the ground. PO Mcdougall did not interact with any civilians while on scene.

Witness Officer: PO CHRISTOPHER WHITE

- PO White is a § 87(2)(b)-old white male, 5'9" tall, 195 lbs., with brown hair and hazel eyes.
- PO White was on patrol for the Cabaret Unit from 8:00 p.m. on May 6, 2011 to 4:35 a.m. on May 7, 2011 with PO Towle in uniform in unmarked vehicle #§ 87(2)(b).

Memo Book

PO White did not have any entries in his memo book in regards to the incident. He had a car stop at 2:45 a.m. and an arrest for DUI. He was doing work in regards to the arrest at the stationhouse until 8:30 a.m. (encl. C23-25)

CCRB Testimony

On August 18, 2011, PO Christopher White appeared at the CCRB to be interviewed (encl. C26-27). At 2:45 a.m., PO White made an arrest for DUI and went back to the stationhouse with his partner. He remained at the stationhouse to process the arrest and therefore was not present for the incident.

Officer Not Interviewed

§ 87(2)(g)

NYPD Documents

SPRINT Report

The SPRINT report was requested on August 11, 2011 but came back negative (encl. I4). The SPRINT log was received on September 6, 2011 (encl. D1-2) and potential SPRINT reports were ordered. On September 21, 2011, the reports were received and were not relevant to the case (encl. I5-6).

Summons/Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

- [§ 87(2)(b)] has not filed a Notice of Claim with the City of New York as of August 19, 2011 with regard to the incident (encl. E1).

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
 - [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
 - [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
 - [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
 - [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
 - [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
 - [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian(s) CCRB History

- This is the first CCRB complaint filed by [§ 87(2)(b)] (encl. A3).

Subject Officer(s) CCRB History

- Sgt. Vazquez has been a member of the service for eight years and there are no substantiated CCRB allegations against him. [§ 87(2)(g), § 87(4-b)]

Conclusion

Identification of Subject Officer(s)

§ 87(2)(b) testified that he was approached by two male Hispanic officers but admitted to not being able to tell them apart. The investigation was able to determine that the two male Hispanic officers were PO Badillo and Sgt. Vazquez. Since PO Badillo testified that Sgt. Vazquez did bring § 87(2)(b) down to the ground when he stood up and restrained him and Sgt. Vazquez admits to restraining § 87(2)(b) § 87(2)(g) [REDACTED]

Allegations Not Pled

§ 87(2)(g) [REDACTED]

Investigative Findings and Recommendations

Allegation A – Discourtesy: An officer spoke obscenely and/or rudely to § 87(2)(b)

[REDACTED] and § 87(2)(b) [REDACTED]

§ 87(2)(b) alleged that when he was initially approached, an officer told him and his friends to “get the fuck on the floor.” § 87(2)(b) did not know which officer said the phrase and could not distinguish between the two officers that initially approached him. § 87(2)(g) [REDACTED]

Allegation B – Force: An officer pointed his gun at an individual.

§ 87(2)(b) alleged that one of the Hispanic officers that initially stopped him pointed his gun at an individual he could not identify by name. Sgt. Vazquez admits to drawing his gun during the brief pursuit of § 87(2)(b) but denies ever pointing the gun at anyone. § 87(2)(g) [REDACTED]

Allegation C – Force: Sgt. Mark Vazquez used physical force against § 87(2)(b)

[REDACTED] alleged that during his stop for an open container, he got off the ground to avoid broken glass but somehow fell back on the floor and was punched in the face by one of the Hispanic officers. PO Badillo testified that Sgt. Vazquez did bring § 87(2)(b) down to the ground when he stood up and restrained him but never punched him in the face or anywhere else. Sgt. Vazquez admits to restraining § 87(2)(b) but does not admit to bringing him to the ground or punching § 87(2)(b) in the face. § 87(2)(g) [REDACTED]

Team: _____

Investigator: _____ : _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date